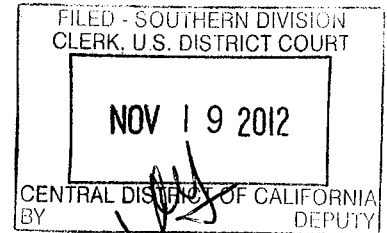


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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

SOPHAN POK,	)	Case No. CV 12-9347-JVS (MLG)
	)	
Petitioner,	)	ORDER DENYING CERTIFICATE OF
	)	APPEALABILITY
v.	)	
	)	
HOLLAND, Warden,	)	
	)	
Respondent.	)	

Rule 11 of the Rules Governing Section 2254 Cases in the United States District Courts requires the district court to issue or deny a certificate of appealability ("COA") when it enters a final order adverse to the petitioner. Because jurists of reason would not find it debatable whether this Court was correct in its ruling dismissing the petition as successive under 28 U.S.C. § 2244(b)(3)(a), a COA is denied.

Before Petitioner may appeal the Court's decision dismissing his petition, a COA must issue. 28 U.S.C. § 2253(c)(1)(A); Fed. R. App. P. 22(b). The Court must either issue a COA indicating which issues satisfy the required showing or provide reasons why such a certificate should not issue. 28 U.S.C. § 2253(c)(3); Fed. R. App.

1 P. 22(b); *see also* *Wilson v. Belleque*, 554 F.3d 816, 824 (9th Cir.  
2 2009).

3 The court determines whether to issue or deny a COA pursuant to  
4 standards established in *Miller-El v. Cockrell*, 537 U.S. 322 (2003);  
5 *Slack v. McDaniel*, 529 U.S. 473 (2000); and 28 U.S.C. § 2253(c).  
6 Ordinarily, a COA may be issued only where the petitioner has made  
7 a "substantial showing of the denial of a constitutional right." 28  
8 U.S.C. § 2253 (c) (2); *Miller-El*, 537 U.S. at 330. Where, as here, the  
9 district court dismisses a habeas corpus petition without reaching  
10 the prisoner's underlying constitutional claim, a COA should issue  
11 when the prisoner shows, at least, that jurists of reason would find  
12 it debatable whether the petition states a valid claim of the denial  
13 of a constitutional right and that jurists of reason would find it  
14 debatable whether the district court was correct in its ruling.  
15 *Slack*, 529 U.S. at 484; *Gonzalez v. Thayer*, 132 S.Ct. 641, 648 (2012);  
16 *See also* *Miller-El*, 537 U.S. at 338.

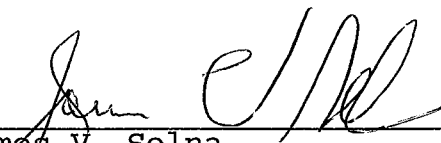
17 In *Silva v. Woodford*, 279 F.3d 825, 832-33 (9th Cir. 2002), the  
18 court noted that this amounts to a "modest standard". (Quoting  
19 *Lambright v. Stewart*, 220 F.3d 1022, 1025 (9th Cir. 2000)). Indeed,  
20 the standard for granting a COA has been characterized as  
21 "relatively low". *Beardlee v. Brown*, 393 F.3d 899, 901 (9th Cir.  
22 2004). A COA should issue when the claims presented are "adequate  
23 to deserve encouragement to proceed further." *Slack*, 529 U.S. at  
24 483-84, (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 (1983)); *see*  
25 *also* *Silva*, 279 F.3d at 833. If reasonable jurists could "debate"  
26 whether the petition could be resolved in a different manner, then  
27 the COA should issue. *Miller-El*, 537 U.S. at 330.

28 //

1 Under this standard of review, a COA will be denied. In  
2 dismissing this petition for writ of habeas corpus, this Court found  
3 that the petition was challenging the same conviction and sentence  
4 which was the subject of an earlier petition that was denied on the  
5 merits. Petitioner cannot make a colorable claim that jurists of  
6 reason would find debatable or wrong the decision dismissing the  
7 petition as successive.

8 Therefore, pursuant to 28 U.S.C. § 2253, the Court DENIES a  
9 certificate of appealability.

10  
11 Dated: 11.19.12

12  
13   
14 James V. Selna  
United States District Judge

15  
16 Presented By:

17   
18  
19 Marc L. Goldman  
United States Magistrate Judge